IN THE

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 45.

THE UNITED STATES

VS.

E. B. ISHAM, Defendant.

ON A CERTIFICATE OF DIVISION OF OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

Brief for the Defendant.

CHARLES P. JAMES,
OF COUNSEL.

WASHINGTON, D. C.
W. H. MOORE, PRINTER, 511 ELEVENTH STREET.
1873.

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Brief for the Defendant.

The first question asked of this Court by the certificate, is: "Whether the instrument annexed to the information in this case, and made a part of each count thereof, and introduced in evidence, is on its face subject to be stamped?"

It is convenient, therefore, to state the face of the paper, which is as follows:

5] IRON CLIFFS COMPANY. [FIVE
1190) NEGAUNEE, MICH., *Jan. 3rd*, 1870.

Pay to the order of E. B. Isham, sup't. or bearer,

FIVE DOLLARS,

Value received, and charge to account of

E. B. ISHAM.

To CHARLES J. CANDA, Esq., *New York.*

Countersigned:

E. S. GREEN, *Clerk.*

Vol 13.

The schedule of instruments required by law to be stamped, imposes—

1. Upon every *draft*, or *order for the payment* of any sum not exceeding ten dollars, drawn upon any person other than a bank, banker, or trust company, *at sight or on demand*, a tax of two cents.

2. Upon every *draft*, or *order for the payment* of any sum of money not exceeding one hundred dollars, *otherwise than at sight or on demand*, a tax of five cents.

3. Upon every promissory note, a tax of five cents.

By an exception it is provided that the last two shall not apply, respectively, to bank notes issued for circulation, nor to checks made and intended to be forthwith presented, and which shall be presented to a bank or banker for payment.

4. Upon any memorandum check, (as the statute should be read,) receipt, or other written or printed evidence of an amount of money to be paid on demand, or at a time designated, for a sum not exceeding one hundred dollars, a tax of five cents.

This schedule contains the *designation* of the several instruments requiring a stamp, and whatever comes under either head is something different from the instruments intended by the other. By promissory notes are intended instruments which are *not* drafts nor orders for the payment of money; and by written or printed evidences of an amount of money to be paid on demand or at a time designated, are meant such evidences as are neither drafts nor promissory notes, notwithstanding both might be evidences of money to be paid. This is a settled and invariable rule for the construction of statutes; and Congress cannot be supposed, in this particular instance, when occupied in making a schedule or list of taxable objects, to have fallen into the confusion of including the same object, at different rates, under two different heads.

If, then, the instrument described in the Information can come under the designation of draft or order for the payment of money, as contained in the schedule, it is entirely immaterial that its *legal operation* is that of a promissory note or of an evidence of money to be paid. Whatever obligations it may create, it is neither of the latter *in the sense of this statute.*

On its face, this instrument is an order of one person to another person to pay money. That constitutes a bill of exchange, or draft, an order for the payment of money.

But the informant claims to show that the drawer and drawee are both agents of a common principal, the Mining Company; and that in such a case the draft or order is by the principal upon himself. He then claims that such a draft stands accepted from the beginning, and that, being in this way an absolute promise, it is a promissory note. In other words, he claims that because the acceptance of a bill imposes the same obligation as does a promissory note, therefore an accepted bill is in fact a promissory note.

He claims that the stamp on the instrument is to be determined by the obligation shown by facts outside of the instrument, and not by the designation given to the instrument by the schedule.

If it be admissible to show that the drawer drew, as an agent of the Company, upon the drawee as another agent, the instrument would still be a bill. It would then be established that it was the duty of one of these officers to allow demands, and of the other to make payment when ordered by the officer who was authorized to make the allowance. It is perfectly competent for officers so related to conduct the business by draft or orders for payment of money.

In *The Marion and Mississinewa Railroad Company* vs. *Dillon*, 7 Porter, Ju., 404, it was held that where a debt is due from a Company, and it is the duty of one officer, or set of officers to allow demands, and draw upon another officer who has the custody, and is charged with the duty of

+ Mare vs Charles 5 Ellis + Black. 978 8 L Eng C. L. 981.

9a.

the disbursment of the funds, for payment, the order is a draft. A draft certainly exists when one person, competent to give an order, does actually give such order to another person to pay money. That is precisely what happens in the case of two officers of a Company, to whom these duties are allotted. It is a most appropriate case for the use of a bill of exchange, and the fact that both are agents of a common principal, does not even make it a case of the principal drawing upon himself.

In English *vs.* The Board of Trustees of the Indiana Asbury University, 6 Porter, Ju., 437, an order by the Secretary upon the Treasurer of the Corporation was treated as a bill.

In *Kaskaskia Bridge Company* vs. *Shannon*, 1 Gillm., Ill. R., 15, the Bridge Company drew drafts on its treasurer. The court said: "The circumstance of the defendant below, (the bridge company,) having drawn it upon their own treasurer, as admitted on record, does not change the nature of the instrument, or the rules of law applicable to it. The drawer and drawee may be the same person in a bill of exchange."

In Cunningham *vs.* Wardell, Fairf., 466, it was held that a bill drawn by the drawer upon himself was an accepted *bill of exchange.*

In Randolph *vs.* Parish, 9 Porter, Ala., 76, the drawer and drawee were the same person. The court said: "It was competent for the defendant, had he thought proper, to have treated the bill as a promissory note (in legal operation) against the plaintiff, and thus to have sued it. Yet he was not obliged thus to consider it; for it has been long settled, that it is not necessary to constitute a bill, that there should be three distinct parties. There are sometimes only two, as where a party draws on another, payable to his own order,—and it has been said, that a party may draw on himself, payable to his own order, and such a paper, when negotiated, will be a bill, in the hands of an indorsee. Among commercial men it is not unusual

for them to be concerned in mercantile establishments, at different places, at the same time; and for the house at one place to draw on the house at the other, and if a bill drawn under such circumstances is dishonored, it never has been questioned but the drawers were liable to damages, and we think cannot be, upon any just principles of reasoning or analogy. Now, if a drawer is chargeable with damages, who draws his bill on himself, payable at some other place than that in which it is negotiated, we cannot conceive why a different rule should be adopted, where it is payable at the same place."

In Wildes *vs.* Savage, 1 Story, 22, (29,) Mr. Justice Story said: "An instrument is not the less a bill of exchange, because all the parties to it, in the character of drawers, payees, and drawees are not different persons. A bill drawn by a person, payable to his own order, has always been deemed to be a bill of exchange in the commercial sense of the phrase. And it would not cease to be such a bill, if it should be endorsed by the drawer payable to the drawee. * * * In truth, where the bill is negotiable, and contains a drawer, a payee, and a drawee, it is, in a commercial sense, a bill of exchange, although one or more of the parties should fill a double character. *It is of no consequence, in such a case, what particular individuals represent the dramatic personages.* Bills of exchange, so called, have sometimes been drawn by the drawer upon himself, payable to himself or order; and they have been held valid after endorsement by him to another person."

Chitty, (Bills, 24,) says: "A bill will be valid where there is only one party to it, for a man may draw on himself payable to his own order. In such case, however, the instrument *may be treated as in legal operation a promissory note,* and declared on as such. But in practice it is usual to declare upon the instrument as if it were a bill, not admitting the identity of the drawer and drawee."

Story (Bills of Ex., Sec. 35) says: "The drawer may at once become a drawer, payee, and drawee; as, for ex-

ample, if he should draw a bill on himself, payable to his own order, at a particular place, naming no drawee, and then should endorse it over, the indorsee might sue him as acceptor of the bill, or as maker of a promissory note, at his election."

Parsons (Notes and Bills, v. 1, p. 62) says: "It is not absolutely necessary that the drawee should be a different person from the drawer. For it is very common for a man to draw upon himself; and it has long been held that such an instrument *is a good bill of exchange.*"

The fact that the holder may declare upon an accepted bill of this kind as if it were a promissory note, is only *a rule of pleading.* A pleader is bound, and only bound, to declare according to the legal effect of a promise. But although the drawer's acceptance is, like his promissory note, an absolute promise, it does not follow that an accepted bill is in fact a promissory note. These very cases show that it is a bill. If so, it comes under that designation in the Schedule.

The Attorney General insists, in this case, upon a method of construing revenue acts which is inconsistent with the rule established by this court.

In the case of "Two hundred chests of tea," 9 Wheat., 430, (439), the court said: "The object of the duty laws is to raise revenue, and for this purpose to class substances according to the general usage and known denomination of trade. Whether a particular article were designated by one name or another in the country of its origin, or whether it were a simple or mixed substance, was of no importance in the view of the legislature. It did not suppose our merchants to be naturalists, or geologists, or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic. And it would have been as dangerous as useless to attempt any other classification than that derived from the actual business of human life." All of these considerations apply with pecu-

liar force to this Schedule of taxable instruments. The legislature did not expect that merchants and bankers and manufacturers should be aware that, *in pleading*, a certain class of bills might be declared on as promissory notes, nor even that an accepted bill was an evidence of money to be paid.

In the Circuit Court, Mr. Justice Story said, in the case of *U. S.* vs. *Wigglesworth*, 2 Story, 369, (373 :)

"It is, as I conceive, a general rule in the interpretation of all statutes, levying duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, *such statutes are construed most strongly against the Government*, and in favor of the subjects or citizens, because burthens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense either remedial laws, *or laws founded upon any permanent public policy*, and therefore are not to be liberally construed."

The American rule of construction has long been settled in the State courts, and has been steadily adhered to. See

Conway *vs.* Warren, 3 Johns. Cases, 259, 261, (1802.)
Hugers *vs.* Strickler, 19 Iowa, 416.
Dorris *vs.* Grace, 24 Ark., 333.
Cilley *vs.* Gray, 37 Vt., 137.
Vail *vs.* Knapp, 49 Barb., 299.
Harfee *vs.* Clark, 17 Ohio St., 193.
Hitchcock *vs.* Sawyer, 39 Vt., 416.
Boyd *vs.* Wood, 57 Penn., 98.

The English cases have been equally positive and uniform in the same direction. See

Wroughton *vs.* Turtle, 11 M. & W., 561.
Denn *vs.* Diamond, 4 B. & C., 245.
Doe *vs.* Snaith, 8 Bingh, 153.
Gurr *vs.* Scudds, 11 Exch., 190.

The third question certified to this Court asks: "Whether, if the paper in question was made and issued with the design that it should be used as a local circulating medium, and was actually used by the holders as such, it *thereby* became subject to be stamped, and whether the evidence given by the prosecution, tending to prove these facts, was relevant and admissible?"

It seems clear that this revenue law relates to instruments, and not to uses which they might serve.

The fourth question: "Whether, assuming every fact which the evidence in support of the prosecution tends to prove, *the defendant* is guilty of the offence charged," seems to bring up the whole case on a certificate.

If the Court find it a proper question, it should be added that an agent cannot *make*, *sign*, or *issue* the note or evidence of the principal. The statute imposes the penalty upon the maker, signer, and issuer of the instrument, not upon the agent whom he uses.

CHARLES P. JAMES,
Counsel for Defendant.

14 Fed. Rep. 142

Supreme Court of the United States.

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Amended Brief.

The following is submitted by defendant, in addition to the points stated in his brief filed.

The second question is: "Whether the evidence offered by the prosecution, tending to prove that Edwin B. Isham was superintendent of the Iron Cliffs Company, and drew the instrument in question in that capacity, or that Charles J. Canda was the treasurer of said company, and the instrument was drawn upon him in that capacity, or that said paper was drawn in the course of said company's business, was relevant and admissible?"

The evidence *tends* to show that the instrument was that of the corporation or company, and only goes to show that the issuing, &c., was not in law the act of the defendant.

The fifth question asks: Whether the information in this case sufficiently charges any offence under the laws of the United States?

The first count is defective because it describes the instrument in such terms as to make it the instrument of the principal alone, and then alleges that the defendant made and issued it as agent. This states no offence.

The second and fourth counts charge *signing* as the offence. No such offence exists in such cases.

The third count actually charges the making, signing and issuing of a draft. At all events it does not state the case of a promissory note, nor name any taxable instrument. It is therefore defective.

CHARLES P. JAMES,

Counsel for Defendant.

— Ashton's authority not on this —
4. Comstock — 208 — Mass. Reports
5 Allen 341 —
10 Cushing 324
8 Allen 416.
39. Maine — 172 —
1 Nathan 23

Supreme Court of the United States.

BOARD OF PUBLIC WORKS OF VIRGINIA
v.
THE COLUMBIAN COLLEGE AND OTHERS. } No. 432.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLANTS.

The case was this—

In 1858 the appellants filed a bill in equity in the Circuit Court of Alexandria, Virginia, against William Selden, John Withers, Lawrence P. Bayne, George W. Carlyle Whiting, and Robert W. Latham, who had been bankers, in Washington, under the firm-name of Selden, Withers & Co., claiming, principally, an account of the proceeds of certain bonds of the State of Virginia which had been deposited with said bankers, by said Board, for sale. Other persons were also made defendants, (p. 6 of printed record.)

John Withers and Geo. W. C. Whiting were personally served with process, (pp. 36 and 37 of record.) The other members of said firm were non-residents, (p. 36,) and were proceeded against by publication and otherwise, according to the practice of the court, so as to mature the case for hearing as against them. (pp. 37, 75.)

Withers filed his answer. The cause was referred to

a commissioner (p. 75) who made a report, (pp. 76 to 93,) and the cause coming on to be heard on all the proceedings, the court, on the 1st of June, 1860, decreed that the complainants, the Board of Public Works of Virginia, recover from the defendants, Wm. Selden, John Withers, L. P. Bayne, R. W. Latham, and G. W. C. Whiting, the partners composing the firm of Selden, Withers & Co., the sum of five hundred and thirteen thousand, six hundred and fifteen $\frac{29}{100}$ dollars, being the sum ascertained to be due by the report of the Commissioner.

John Withers moved to the District of Columbia in 1860, and died there in November, 1861, having left a a will, insufficient to pass realty, whereby he bequeathed his whole estate to sundry legatees, among whom were the defendants, the Columbia College, Madden, and Gulick.

In October, 1865, the legatees filed a bill against the executor for a distribution of the personal estate, and a decree directing such distribution was passed in April, 1866, and distribution was made accordingly. (p. 2 of record.)

The present bill was filed July 24, 1867, to enforce the Virginia decree against the estate of John Withers.

It seeks, first, to reach what real estate may be found in the District of Columbia, and, for this purpose, the heirs at law were made parties, by publication. An undivided interest in the National Hotel was decreed, by consent, to be sold by a receiver. It further seeks to recover from the executor any personal estate in his hands.

The principal object of the suit, however, is to compel the legatees to refund the amounts distributed to them, towards the satisfaction of the decree against John Withers and others.

None of the defendants, except the three legatees above named, having appeared and answered, the only material averments in the record relate to the subject of the legacies.

In relation to these, the answers, which are substantially the same, rely upon the nonjoinder of Withers' partners in this suit and upon the statue of limitations; and hold, further, that the Virginia decree was only interlocutory and was so held by the Court of Appeals of Virginia, on appeal; that the cause of action was merged in the decree in a suit between the same parties in New York, a transcript of which is filed in the Virginia cause; and that the distribution under the decree of the Supreme Court of this District was a complete protection.

General replication was filed to the answers and no proof taken.

The Virginia decree is final and conclusive:—

"Where a chancery suit has terminated in a decree ascertaining a clear balance, and decreeing, unconditionally, that an individual shall pay it, an action at law will lie on it in another State." 1 Robinson's Practice, p. 204.

Such a decree is final, according to the Virginia decisions, (See Harvey v. Branston, 1 Leigh, 108; Thornton v. Fitzhugh, 4 Leigh, 209; Dunbar's Executors' v. Woodcock, 10 Leigh, 629,) and must be treated as conclusive in other States. (See Mills v. Duryee, 7 Cranch, 578.)

For other examples of decrees treated as final, by the Supreme Court, see Ray v. Law, 3 Cranch, 170; Whiting *et al.* v. Bank of United States, 13 Pet, R. 6.

II.

Creditors of a deceased person have a right to pursue assets in the hands of legatees, (1 Story's Equ. Jur.,

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The principal object of the suit, however, is to compel the legatees to refund the amounts distributed to them, towards the satisfaction of the decree against John Withers and others.

The Columbian College, Madden and wife, and Gulick and wife, all of whom were legatees, are the only parties who have appeared in the cause. The first named only was served with process.

While several other subjects appear upon the record, the only question really controverted and decided was as to the liability of these legatees to refund the amounts received by them as legatees, to be applied to the judgment of the complainants.

The court below dismissed the bill without prejudice. (see p. 115 of record.)

This is assigned as the error in the decree below.

I.

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II.

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Sec. 92, and cases cited; Williams on Executors, p. 1244; and this law is recognized in Maryland, (Kent v. Somervel, 7 G. & J., 265, in the Supreme Court, United States, (see Riddle v. Mandeville & Jackson, 5 Cranch, 322,) and in New York, even in case of waste by the executor, (Lupton v. Lupton, 2 John's Ch. R., 635, and Turner v. Chambers, 10 Hill, 308.)

III.

The defendant objected to the non-joinder of the other partners.

This is not necessary. It is true, Story asserts it to be, generally, (see Story's Equity Pleadings, sec. 168, 178,) but the cases cited only maintain that in suit against a deceased partner's representatives the survivors *may* be joined.

And the only reason assigned for joining is, that an account may be stated between the parties. This would apply to the original suit in Virginia, and there they were all joined, but would not apply to a suit on a decree rendered in the original cause, and which it is sought to enforce against assets of one of the partners, found here. (See cases cited, and Collyer on Partnership, section 840, and cases.)

IV.

It was objected that the claim, as against Withers, was merged in a decree obtained in New York against the other partners.

We answer, first, whatever might be said of the original claim, the present suit is founded on a *decree* subsequent to the New York suit, which could not be merged, and not upon the original cause of action said to have

been merged. The correctness of this decree cannot be questioned here, even if the court should consider it erroneous in point of law; and second, the doctrine of merger is not applicable in equity. A partnership debt is joint and several in equity, though only joint at common law, (Collyer on Partnership, sec. 580 and note.) Where a debt is joint and several, judgment against one is no bar against the other, (Id 757.)

V.

It was contended that the decree is a nullity as against those not summoned, and being a nullity as against them, is a nullity as to all the defendants, being an entire thing. For this proposition were cited several authorities, viz: Hall v. Williams, 6 Pick, 232; Knapp *et al*, v. Abell, 10 Allen, 485; Holbrook v. Murray, 5 Wend, 161; Rangsley v. Webster, and *al.*, 11 N. H. 299; and one or two others not in point, on this question.

It is true, that in those cases the courts do say, that the judgments relied on, being void as to one of several defendants, were void as to the others. But the error of the other side is, in overlooking the reasons of these opinions, and, consequently, mistaking the extent to which they are applicable. They were all suits at *common* law on *common* law judgments; except one, which was a *common law suit*, in which a *common law judgment* for the cause of action, between the same parties, was pleaded as a bar; and they all turn upon the technical rules of pleading and practice belonging to common law courts.

They decide nothing more than this, viz: that for the purposes of suing and pleading at common law, a joint judgment must be good against all the parties, or it is

wholly bad. The same rule applies to all other securities, whether a joint bond or a joint note.

All the living parties must be joined in the suit, and unless the joint cause of action be established against all, there is variance and the action or plea fails.

All this is wholly inapplicable to the present cause. This is not a suit against any of the parties to the decree, but against entirely new parties—the executor and legatees of a deceased party—a suit which could not be maintained at common law at all, but which is maintainable in equity, on the ground of being a several claim against each of the original parties; in which view, it is wholly immaterial whether it is valid or not, as against one or more of the others. In such a suit, being against entirely new parties, no question can arise, as at common law, about non-joinder, or the entirety of the cause of action.

Beyond the sole point decided as above, the authorities do not go. After diligent search, we have been unable to find a case which holds that even a common law judgment, void against one, is void against all, for any other purpose than to sustain or defend a *common law suit.* Thus, it has never been held, as far as we can discover, that an execution on such a judgment cannot be levied on the effects of the party served with process, or that a court of equity cannot enforce such a judgment against the real assets of such a party.

Nor do we find, that a decree in equity, inoperative against one, has ever been held to be void against all, for any purpose, though we may admit, that, for the purposes of a common law suit upon it, it might be.

But certainly courts of equity would never regard a *decree* as absolutely void, because not affecting one of

the defendants, *for want of jurisdiction.* Here is a case in which the defendants, appearing to the suit, were amenable, both jointly and singly. The record shows that the suit was founded on a partnership transaction, and the decree is against all the defendants *as partners.* If it was equitable that the decree should go against the parties appearing, for the whole debt, which cannot be gainsaid, such a technicality as is set up against it, would not be listened to, either on appeal or in a collateral proceeding, in any court of equity. In the case of Moseley v. Cooke, 7 Leigh 224, a decree was reversed on appeal *as to one of the defendants*, because he did not appear to have been served with process; but there was not the slightest intimation that it was, for that reason, void, as to the others. See also Ends v. Capps, 12 Ill., 207; Murphy v. Orr, 32 Ill., 489; Dickerson v. Chrisenan, 28 Mis., 134; and opinion of Justices Grier, Nelson, and Swayne in U. S. v Dashiel, 3 Wall, 689.

As to a decree for the performance of some specific thing, as a release, a conveyance, etc., this would seem very plain, but in fact, a decree for payment of money, is just as severable, in the view of equity, and in reference to the machinery for its enforcement in equity, as the other.

It is sufficient for us, that no court has ever held a decree of any sort incapable of being enforced in equity against some of the defendants because void, for want of jurisdiction, against the others. Besides, a court of equity will look behind the form of the security and treat it as joint or several, according to the nature of the debt. A joint bond, for a partnership debt, will be construed as joint and several. Collyer on partnership, sec. 587, *et sequ.* And all partnership debts are several; so that the estate of a deceased partner can be followed, which cannot be done at common law.

Now this decree shows on its face, that it is founded on a partnership transaction. In the view of a court of equity, it will be treated as joint and several, and enforced against any one of the defendants found by it, or the estate of any deceased defendant. If so, it is wholy immaterial whether it be void as against any one or more, for want of jurisdiction. If it were wholy void, it would not be material whether it be joint and several, but it is *not wholly void, because it is joint and several*, in the view of a court of equity. For it cannot be pretended, that a personal defence of one of several parties to a joint *and several* instrument, is a defence to the others, pursued severally. A joint and several bond, void as to one, because of infancy or other reasons could undoubtedly be enforced against the others separately.

VI.

The defence of limitation was relied on. But the cause of action is a *decree* or *judgment*, dated June 1st, 1860, and good for twelve years. See Kilty's, laws of Maryland, Act of 1715, ch. 23, Sec. 5. But if it were not, the non-residence of the complainant brings it within the exception of "beyond seas." It is objected, that there is nothing in the pleadings to avoid the defence of limitations; that it is not anticipated in the bill by the averment of "beyond seas," or met by an amendment.

The bill avers that the complainant, *a body politic and corporate under the laws of Virginia*, entered into a certain contract with the defendant's testator and others, and the answers *admit it*. They admit the identity of the complainant, for there is no other description of the complainant in the pleadings than that above given.

Now this court have settled, in the case of Marshall v. Baltimore and Ohio Railroad Company, 16 How. 314,

that an averment that a party is a body corporate under the laws of a State, is a sufficient averment of its residence and habitat in that State, to give the Federal Courts jurisdiction in a suit with a citizen of another State. They go the length of treating a corporation as a citizen, resident and inhabitant of the State by which it is incorporated. The decision of Judge Washington, in Bank United States v. McKenzie, 2 Brockenborough, p. 393, treats a corporation as also entitled to the defence of beyond seas. It therefore clearly appears, that the non-residence of the complainantis sufficiently averred in the bills to render an amendment unnecessary, to meet by anticipation, the defence of limitations, even if the cause of action be open to that defence.

But, again, the war suspended the statue of limitations. The complainants were, to all intents and purposes, foreign enemies, and had no right to appear in the courts here until peace was proclaimed. (Hanger vs. Abott, 6 Wallace, 532.)

The war was not proclaimed at an end until April 2d, 1866. (14 Stat. at Large. 811.) This suit was begun in 1867.

It is therefore submitted that the decree below should be reversed and a decree entered against the defendants for the amounts received by them respectively

WALTER S. COX,
of counsel for complainants.